HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Petition No.5030 of 2002

Between:

B. Pydaiah … Petitioner.

AND

Registrar (Administration),
High Court of Andhra Pradesh,
Hyderabad & others. … Respondents.

:: O R D E R ::

Counsel for the Petitioner : Sri Ravi Kondaveeti

Counsel for the Respondents : Smt. M.Bhaskara Lakshmi

26th APRIL 2006

Per G.S. Singhvi, C.J.

In last thirty years, the country has witnessed rampant favouritism, nepotism and corruption in appointments to public posts and services. The constitutional goal of equality enshrined in the Preamble and Articles 14 and 16(1) has been subverted and statutory provisions like those contained in the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (for short 'the 1959 Act') have been flouted with impunity in most of the recruitments made at the lower level. Thousands of appointments are made in each State

on ad hoc/work charge/ daily wage basis without issuing public advertisement and without following the procedure which could enable eligible candidates including those registered with the Employment Exchanges to participate in the process of recruitment. Likewise, hundreds and thousands of appointments have been made on casual or part-time basis in the name of an effecting economy. Such appointments are initially made for few days or months, but are continued for years together with or without breaks. In the course of time, the employees appointed on ad hoc / temporary / daily wage basis or even casuals and part-timers become a force to reckon with. They agitate and persuade the political apparatus of the governments to issue instructions and even enact legislative instruments for regularisation of their services. All this is done in the name of compassion. Those aggrieved by denial of consideration for appointment seek intervention of the Court. Even those who are appointed by back-door seek intervention of the Courts for issue of directions to the concerned executive authorities to regularise their services. As a consequence, almost all the courts in the country, including the highest court, have been flooded with litigation and considerable time of the Courts is consumed in dealing with such cases. Almost fourteen years ago, the Supreme Court took cognizance of the illegal employment market which has developed in the country and strongly deprecated the practice of back-door employment – **Delhi Development Horticulture Employees' Union v. Delhi Administration**[1]. Some of the observations made in that judgment are extracted below:

> "Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days, has been leading. Although there is

Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The Courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such back-door entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the Courts are of employment in Government Departments, Public Undertakings or Agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employees although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts."

Unfortunately, despite condemnation by the highest Court,

successive Governments have framed policies for regularisation of services of daily-wagers, temporary appointees, casuals and even part-timers. Though the genesis of such policies is the desire of people in power to regularise the illegal actions of their own or of their predecessors of making appointments in complete disregard of the constitutional ethics and various statutory provisions, the facade of mercy and compassion has been repeatedly projected before the Courts to justify and defend such policies. The decade of 1990s represents era when the highest Court of the country put its seal of approval on the policies of regularisation in the name of compassion. One such decision, which has been often quoted in judicial circles, is **State of Haryana v. Piara Singh**[2]. In that case, a three-judge Bench of the Supreme Court reversed the direction given by the Division Bench of Punjab and Haryana High Court in **Piara Singh v. State of Haryana**[3] for regularisation of the services of employees of different categories, who had completed 240 days of service, but, at the same time, approved the policies of regularisation framed by the Governments of Punjab and Haryana. This trend continued for the next eleven years. The enormity of the complications created due to framing and implementation of the policies of regularisation was realised by the Supreme Court after a gap of twelve years and in **A. Umarani v. Registrar, Cooperative Societies**[4], the Supreme Court categorically ruled that in exercise of its executive power under Article 162 of the Constitution, the State cannot regularise the appointments made in violation of mandatory provisions of the statute. In that case, a three-Judge Bench reviewed various judicial precedents on the subject and culled out the following propositions:

1) Article 162 of the Constitution of India provides for extension of executive power to the matters with respect of which the legislature of the State has power to make laws.

Article 162 of the Constitution by no stretch of imagination is attracted as the source of the power of the State to pass an appropriate order must be traced to the provisions of the Act itself.

2) Regularisation, in our considered opinion, is not and cannot be the mode of recruitment by any "State" within the meaning of Article 12 of the Constitution of India or any body or authority governed by a statutory Act or the Rules framed there under. It is also now well settled that an appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.

3) It is trite that appointments cannot be made on political considerations and in violation of the Government directions for reduction of establishment expenditure or a pro2-8hibition on the filling up of vacant posts or creating new posts including regularisation of daily-waged employees."

The above-stated propositions have been reiterated in **Executive Engineer, ZP Engineering Divn. V. Digambara Rao**[5], **Pankaj Gupta v. State of Jammu & Kashmir**[6], **Madhyamik Shiksha Parishad, U.P. v. Anil Kumark Mishra**[7], **Mahendra L. Jain v. Indore Development Authority**[8], **Union of India v. Gagan Kumar**[9] **and State of Maharashtra v. R.S. Bhonde**[10].

In our opinion, the practice of making illegal and/or irregular appointments and then regularising such appointments have an everlasting adverse impact on the morale of the service. This has given rise to deep frustration among those who have been waiting in the queues in the employment exchanges for years together with the fond hope that some day some public authority will realise its duty to abide by the constitutional provisions and make recruitment by

following the procedure established by law.

The dismal employment scenario prevailing in the country where thousands of graduates and post-graduates wait in the queues for an opportunity to compete for selection for appointment on Class III and even Class IV posts, it is impossible to find any rationality in the policies of regularisation of services of part-timers, daily-wagers, casuals, work-charged and ad hoc back-door entrants. Sooner the State apparatus and other public authorities become alive to this grave problem, better it is, else literate masses are bound to resort to unconstitutional methods and means for fulfilling their dreams and aspirations.

We have prefaced disposal of this petition by making a brief reference to the cancerous growth of the malady of irregular appointments and the policies of regularisation because the petitioner has also come up with the prayer to nullify the decision taken by Registrar (Administration), Andhra Pradesh High Court to decline his prayer for regularisation of service.

The petitioner got back-door entry in the service of Judicial Department on 1-11-1988 when he was appointed as part-time Masalchi in the Court of Additional Junior Civil Judge, Tadepalligudem, West Godavari District. In the very nature of things, the competent authority could avoid compliance of the mandate of Sections 3 and 4 of the 1959 Act because the appointment was made on part-time basis. One could countenance such an appointment for few days or months, but the fact of the matter is that the petitioner continued as part-time employee for ten years. He was shown the door in 1998 when the competent authority, vide its order dated 9-9-1998, terminated his service. He challenged the same in Writ Petition No.31115 of 1998, which was disposed of by the High Court on 10-2-1999. The relevant extract of that order reads as under:

> "The petitioner has straightaway approached this Court

without seeking any redressal departmentally. It is open to him to file a representation before the District Judge seeking reinstatement, coupled with an assurance that he would discharge his duties properly. If such a representation is received, the District Judge may de novo consider whether the petitioner should be reinstated. It is also open to the District Judge to take a decision as to posting the petitioner to a different place in case the District Judge decides to reinstate him on further consideration."

The observations of the High Court were loaded with enough weight to compel the subordinate judicial officers to re-appoint the petitioner despite his recalcitrant attitude towards the service. Additional Junior Civil Judge, Tadepalligudem reappointed the petitioner as part-time Masalchi with effect from 1-12-2000. Immediately thereafter, he represented for regularisation of service. District Judge, West Godavari, Eluru forwarded his case to the High Court. Registrar (Administration) rejected the petitioner's prayer, vide RoC No.2455/2001-D1-5 dated
28-9-2001.

The petitioner has questioned the rejection of his claim for regularisation of service by contending that the decision of the Registrar (Administration) is per se illegal, arbitrary and violative of the policy contained in G.O.Ms.No.212 dated 22-4-1994 and G.O.Ms.No.112 dated 23-7-1997.

In the counter affidavit filed on behalf of the respondents, it has been pleaded that the petitioner is not entitled to be regularised in terms of the policy decision taken by the Government because, at the time of initial appointment as part-time Masalchi in 1988, he did not possess the prescribed qualification and this position continued when he was re-appointed in 2000. It has been further averred that break in the petitioner's service between 9-9-1998 and 1-12-2000 has not been regularised and, therefore, he cannot be treated as

continuing in service from 1-11-1988 for the purpose of regularisation of service.

Learned counsel for the petitioner relied on the judgment of the Supreme Court in **District Collector/Chairman and others v. M.L.Singh and others**[11] and argued that his client is entitled to be regularised in service and the Registrar (Administration) gravely erred by declining his prayer. He submitted that as on the date of issuance of G.O.Ms.No.112, Finance & Planning (FW.PC.III) Department, dated 23.7.1997, the petitioner had completed more than five years service and, thereby, acquired eligibility to be considered for regularisation of service, but the Registrar (Administration) arbitrarily rejected his representation.

Smt. M.Bhaskara Lakshmi, learned counsel for the respondents argued that the petitioner is not entitled to be regularised in service because he does not fulfil the conditions enumerated in the Government Orders. She further argued that the petitioner's service cannot be regularised because he was initially engaged as a part-timer without following any procedure consistent with the doctrine of equality. She pointed out that during the currency of the petitioner's appointment as part-time Masalchi, the State Legislature enacted the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994 (for short 'the Act') and in view of the provisions contained in Sections 3, 4 and 7 of the Act, he cannot seek direction for regularisation of service.

We have thoughtfully considered the respective arguments and have carefully gone through the provisions of the Act as also Government Orders dated 22-4-1994 and 23-7-1997. Section 3 of the Act contains an embargo on temporary appointment as also appointment on daily-wage basis. Section 7, which is couched in negative form, lays down that no person, who is a daily-wage

employee and who is appointed on temporary basis under Section 3 and is continuing as such at the commencement of this Act, shall be entitled to claim regularisation of service. By G.O.Ms.No.212, dated 22.04.1994, the State Government circulated policy for regularisation of daily-wagers and nominal muster roll employees and those appointed on consolidated pay, subject to fulfilment of the following conditions:

> "1) The persons appointed should possess the qualifications prescribed as per rules in force as on the date from which his/her services have to be regularised.
> 2) They should be within the age limits as on the date of appointment as NMR/daily wage employee.
> 3) The rule of reservation wherever applicable will be followed and back-log will be set-off against future vacancies.
> 4) Sponsoring of candidates from Employment Exchange is relaxed.
> 5) Absorption shall be against clear vacancies of posts considered necessary to be continued as per work-load excluding the vacancies already notified to the Andhra Pradesh Public Service Commission/District Selection Committee.
> 6) In the case of Workcharged Establishment, where there will be no clear vacancies, because of the fact that the expenditure on Workcharged is at a fixed percentage of P.S. charges and as soon as the work is over, the services of workcharged establishment will have to be terminated, they shall be adjusted in the other departments, District Officers provided there are clear vacancies of last Grade Service."

The aforementioned conditions were reiterated in the Government Order dated 23-7-1997 which postulates regularisation of service of part-time employees who had completed 10 years continuous service.

It is not the pleaded case of the petitioner that he was eligible to

be appointed as Masalchi either in the year 1998 or the year 2000. It is also an undisputed fact that his initial appointment on part-time basis was made without following any procedure consistent with the doctrine of equality and without considering the claim of other eligible persons. Therefore, he cannot take advantage of the policy contained in the Government Orders to which reference has been made hereinabove. It is also seen that G.O.Ms.No.212, dated 22.04.1994 was issued for regularisation of services of daily-wagers/nominal muster roll employees or those appointed on consolidated pay and not the part-timers. Therefore, the petitioner cannot seek direction for regularisation of service on the strength of the policy contained in that order. He is also not entitled to take benefit of G.O.(P) No.112 because the same envisaged regularisation of services of those who had completed ten years and were continuing in service on 25.11.1993 i.e. the date on which the Andhra Pradesh Act 2 of 1994 was enacted.

For the reasons mentioned above, we hold that the petitioner has failed to make out a case for issue of mandamus to the respondents to regularise his service on the post of Masalchi.

In the result, the writ petition is dismissed. However, it is made clear that if during the pendency of the writ petition, any other policy decision has been taken by the Government to regularise the services of persons like the petitioner and his case is covered by such policy, then this order will not operate as an impediment in the consideration of his case for regularisation of service.

G.S. SINGHVI, C.J.

26th April, 2006.

G. BHAVANI PRASAD, J.

ARS/ksld / svs

[1] AIR 1992 SC 789

[2] (1992) 4 SCC 118

[3] 1988 (4) SLR 739

[4] (2004) 7 Supreme Court Cases 112

[5] (2004) 8 Supreme Court Cases 262

[6] (2004) 8 Supreme Court Cases 353

[7] (2005) 5 Supreme Court Cases 122

[8] (2005) 1 Supreme Court Cases 639

[9] (2005) 6 Supreme Court Cases 70

[10] (2005) 6 Supreme Court Cases 751

[11] 1998 (2) ALT 5 (SC)